



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**[Docket No. 16-12]  
James Dustin Chaney, D.O.  
Decision And Order**

On November 13, 2015, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to James Dustin Chaney, D.O. (Respondent), of Hazard, Kentucky. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration BC8483430, pursuant to which he is authorized to dispense controlled substances in schedules II through V, and the denial of any pending applications to renew or modify his registration or for any other registration, on the ground that he does not have authority to handle controlled substances in Kentucky, the State in which he holds his DEA registration. Show Cause Order, at 1 (citing 21 U.S.C. §§ 823(f); 824(a)(3)).

The Show Cause Order alleged that Respondent is registered as a practitioner with authority to dispense schedule II through V controlled substances at the registered location of 1908 North Main Street, Hazard, KY. *Id.* The Order further alleged that while Respondent's registration was due to expire on August 31, 2015, on August 25, 2015, he filed a timely renewal application and thus, his registration remains in effect until the issuance of this Final Order. *Id.* (citing 5 U.S.C. § 558(c); 21 CFR 1301.13(b)).

As for the factual basis for the proposed action, the Show Cause Order alleged that on August 22, 2014, the Kentucky Board of Medical Licensure had affirmed the Emergency Order of Suspension which was issued to Respondent on June 30, 2014. *Id.* While the Show Cause Order acknowledged that the suspension of Respondent's license to practice osteopathic medicine had been subsequently vacated, it further alleged that to the extent the Emergency

Order had suspended Respondent's authority to dispense controlled substances, this prohibition remains in effect. *Id.* at 1-2. The Show Cause Order thus alleged that Respondent is currently without authority to dispense controlled substances in Kentucky, and therefore, his registration is subject to revocation. *Id.* at 2 (citing 21 U.S.C. §§ 802(21), 823(f), and 824(a)(3)).

On November 23, 2015, the Show Cause Order, which also notified Respondent of his right to request a hearing on the allegations, was served on Respondent by certified mail, return receipt requested. On December 16, 2015, Respondent, through his counsel, requested a hearing; the matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge (CALJ) John J. Mulrooney, II. The next day, the CALJ ordered the Government to file evidence supporting the allegation and a motion for summary disposition by December 31, 2015; in the event the Government filed a motion, the CALJ directed Respondent to file its reply by January 15, 2016.

On December 21, 2015, the Government filed its Motion for Summary Disposition. As support for its motion, the Government attached a copy of the Board's June 30, 2014 Emergency Order of Suspension and the Board's August 22, 2014 Findings Of Fact, Conclusions Of Law, And Final Order. Thereafter, Respondent filed a "Response [t]o Government's Motion for Summary Judgment."

On January 19, 2016, the CALJ granted the Government's motion, finding that there was no dispute as to the material fact that Respondent is without authority to handle controlled substances in Kentucky, and that therefore, Respondent "is not entitled to maintain his DEA registration." Order Granting Government's Motion for Summary Disposition and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, at 5-6. The CALJ further recommended that Respondent's

registration be revoked and that any pending application to renew his registration be denied. *Id.* at 6.

Neither party filed exceptions to the CALJ's decision. Thereafter, the record was forwarded to me for Final Agency Action. Having considered the record in its entirety, I have decided to adopt the ALJ's factual findings, legal conclusions and recommended sanction. I make the following findings.

### **FINDINGS**

Respondent is the holder of DEA Certificate of Registration BC8483430, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of Mountain After Hours Clinic, 1908 North Main Street, Hazard, KY 41701. Mot. for Summ. Disp., at Attachment 1. While this registration was due to expire on August 31, 2015, on August 25, 2015, Respondent submitted a renewal application. *Id.* Thus, Respondent's registration remains active pending the issuance of this Decision and Order. 5 U.S.C. § 558(c).

Respondent is also the holder of a license to practice osteopathy issued by the Kentucky Board of Medical Licensure. Mot. for Summ. Disp., Attachment 3, at 1. However, "[o]n or about June 5, 2014," Respondent "was indicted on two (2) counts of knowingly and intentionally conspiring to distribute and unlawfully dispense Schedule II and III controlled substances," in violation of 21 U.S.C. §§ 841(a)(1) and 846. *Id.* Respondent was also "indicted on one (1) count of having knowingly open[ed], lease[d], rent[ed], use[d] and maintain[ed] a place (to wit [a pain management clinic]) . . . for the purpose of distributing and unlawfully dispensing controlled substances . . . in violation of 21 U.S.C. § 856(a)(1)." *Id.* at 2.

Based on the above, the Board's Inquiry Panel found, *inter alia*, that probable cause existed to believe that Respondent had "[e]ngaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof," and that he "[v]iolated or attempted to violate," abetted, or conspired to violate "any medical practice act, including . . . any other valid regulation of the board." *Id.* (citing Ky. Rev. Stat. § 311.595(9) & (12)). The Inquiry Panel further noted that under the Board's regulations, "[i]f a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety, or welfare," and that upon "receiv[ing] verifiable information that a licensee has been indicted" for such a felony, "the inquiry panel . . . shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license." *Id.* at 3 (quoting 201 Ky. Admin. Regs. 9:240, § 3). The Inquiry Panel thus ordered that Respondent's license to practice osteopathy be suspended. *Id.* at 4.

Thereafter, Respondent sought judicial review of the Emergency Order of Suspension in state court. Mot. for Summ. Disp., at Attachment 4, at 9. He also requested an administrative hearing to challenge the Emergency Suspension. *Id.* at 1.

On August 11, 2014, the state court issued a temporary injunction which enjoined the Board from enforcing the suspension. *Id.* at 9. The state court, however, "kept in place the prohibition against [Respondent's] prescribing, dispensing, or otherwise utilizing a controlled substance. . . pending the issuance of" the Board's Order. *Id.*

On August 15, 2014, a Hearing Officer conducted a hearing at which Respondent was allowed to challenge the Emergency Suspension. *Id.* at 1. Following the hearing, the Hearing Officer found that "there is probable cause to believe [Respondent] engaged in misconduct in

violation of the Board's statutes and that his practice of medicine constitutes a danger to the health, welfare, and safety of his patients or the general practice." *Id.* at 2. However, consistent with the injunction, the Hearing Officer modified the suspension to allow Respondent to "continue to practice osteopathy," while prohibiting him "from prescribing, dispensing, or otherwise utilizing a controlled substance in Kentucky." *Id.*

According to the online records of the Kentucky Board, the prohibition on Respondent's authority to dispense controlled substances remains in effect as of this date. I therefore find that Respondent is without authority to dispense controlled substances in Kentucky, the State in which he holds his DEA registration.

## **DISCUSSION**

Pursuant to 21 U.S.C. § 824(a)(3), "[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." This Agency has further held that notwithstanding that this provision grants the Agency authority to suspend or revoke a registration, other provisions of the Controlled Substances Act "make plain that a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances." *James L. Hooper*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, *Hooper v. Holder*, 481 F. App'x 826 (4th Cir. 2012).

These provisions include section 102(21), which defines the term "practitioner" to "mean[] a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the

course of professional practice,” 21 U.S.C. § 802(21), as well as section 303(f), which directs that “[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” *Id.* § 823(f). Based on these provisions, the Agency has long held that revocation is warranted even where a state board has summarily suspended a practitioner’s controlled substances authority and the state’s order remains subject to challenge in either administrative or judicial proceedings. *See Gary Alfred Shearer*, 78 FR 19009 (2013); *Carmencita E. Gallora*, 60 FR 47967 (1995).

Respondent nonetheless maintains that the proposed revocation of his registration would violate his right to due process because the Hearing Officer applied the wrong standard of proof when he upheld the Emergency Suspension Order. Response to Govt’s Mot. for Summ. Judgment, at 4-8. According to Respondent, this is so because in holding that the Suspension Order was justified by Respondent’s indictment, the Hearing Officer applied a probable cause standard rather than the substantial evidence standard as required by Kentucky law, and thus, the Hearing Officer’s decision is arbitrary and capricious. *Id.* at 5. Respondent argues that he “established with overwhelming and uncontested evidence that his practice of medicine is NOT a danger to the health, welfare, and safety of his patients or the general public.” *Id.* And he further argues that “the Hearing Officer improperly placed the risk of non-persuasion on [him] and applied the [Board’s] unconstitutional regulatory provisions allowing an indictment alone to serve as substantial evidence of a violation of law.” *Id.* at 7.

However, “DEA has repeatedly held that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding brought under section 304 [21 U.S.C. § 824] of the CSA.” *Calvin Ramsey*, 76 FR 20034, 20036 (2011) (quoting *Hicham*

*K. Riba*, 73 FR 75773, 75774 (2008) (other citations omitted)); *see also Shahid Musud Siddiqui*, 61 FR 14818 (1996); *Robert A. Leslie*, 60 FR 14004 (1995). DEA is not vested with authority to adjudicate either the constitutionality of the Board's Suspension Order, or whether the Board's Order is arbitrary and capricious. Respondent must therefore seek relief from the State Board's Order in those administrative and judicial forums provided by the State.

In a revocation proceeding brought under section 824(a)(3), the only issue is whether a respondent holds current authority to dispense controlled substances. Respondent's various contentions as to the validity of the Board's order are therefore not material to this Agency's resolution of whether he is entitled to maintain his DEA registration. Because it is undisputed that Respondent does not hold authority under the laws of Kentucky to dispense controlled substances, he no longer meets the definition of a practitioner under the CSA and thus, he is not entitled to maintain his registration. *See, e.g., Hooper*, 76 FR at 71372. Accordingly, I will order that Respondent's registration be revoked and that any pending application to renew or modify this registration be denied.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. §§ 824(a) and 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BC8483430 issued to James Dustin Chaney, D.O., be, and it hereby is, revoked. I further order that any application of James Dustin Chaney, D.O., to renew or modify this registration, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY (30) DAYS FROM THE DATE OF THE PUBLICATION IN THE FEDERAL REGISTER].

Date: July 11, 2016

Chuck Rosenberg  
Acting Administrator

[FR Doc. 2016-17250 Filed: 7/20/2016 8:45 am; Publication Date: 7/21/2016]